

Remarks

Claims 1-8, 16-24 and 32-35 15 have been rejected. Applicant has amended independent claims 1, 18 and 34; and claims 1-8, 16-24 and 32-35 remain in the application. Reexamination and reconsideration of the application are requested.

In response to the Examiner's observation that claim 35 was omitted from the Preliminary Amendment filed April 14, 2003, Applicant has listed instant claim 35 as original in the current Amendment to the May 7, 2003 Office Action.

Claims 1-8, 16, 17 and 34 stand rejected under 35 U.S.C. 103(a) as being anticipated over Lavernia ('604) taken together with Alvarez et al. ('853) and Garner et al. ('152) in view of O'Handley et al ('004), Bowen et al. ('043) and Watson et al. (Nozzle-Aspirated Metal Forming).

In order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references (when combined) must teach or suggest all the claim limitations.

Applicant respectfully asserts that one skilled in the art of spray forming would not be motivated to combine the references as suggested by the Examiner because Lavernia, O'Handley et al., Garner et al. and Bowen et al. the atomization of the molten material occurs downstream and outside of the "nozzle" and are generally referred to as a "close coupled atomizer". (See: Lavernia column 6, line 39). whereas the Alvarez et. al teaches the gas atomization of the molten material at or within the choke point of the nozzle. (See: Alvarez et al. column 5, lines 37-38 and column 7, lines 6-7). Accordingly, modification of the Lavernia technology to incorporate

the nozzle of Alvarez et al. would render the Lavernia technology inoperable as a close coupled atomizer.

Additionally, Applicant has amended independent claims 1 and 34 to include the recite that the pressure of the atomizing gas is between 20 psia and 30 psia, which is substantially less than the atomizing gas pressure disclosed in any of the cited references. For example, Lavernia discloses an atomizing gas pressure “in the range of 0.7 to 7MPa or between 150 and 350 psi” (see column 8, lines 28-29); O’Handley et al. utilizes an atomizing gas “pressure of about 100 to 1000 psi, preferably about 200 to 600 psi: (see column 5, lines 65-67; and Bowen et al. uses “an atomizing gas pressure in the range of 70 to 140 psig” (see column 4, lines 55-61). Support in the specification for the amendment is found at page 9, line 11; page 15, line 13; page 19, line 16; page 20 line 15; and page 21, line 18. No new matter has been added by the amendment.

Accordingly, Applicant respectfully requests that this rejection be withdrawn.

Claims 18-24, 32 and 33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lavernia (‘604) taken together with Alvarez et al. (‘853) and Garner et al. (‘152) in view of O’Handley et al (‘004), Bowen et al. (‘043) and Watson et al. (Nozzle-Aspirated Metal-Forming) as applied to claims 1-8, 16, 17 and 34 and further in view of Ashok et al. (‘752).

In view of the foregoing remarks and amendments, Applicant believes that independent claim 18, and all claims that depend thereon (i.e., 19-24, 32 and 33) define an invention that is novel and unobvious over the cited references and requests that this ground for rejection be withdrawn by the Examiner.

Claim 35 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Lavernia (‘604) taken together with Alvarez et al. (‘853) and Garner et al. (‘152) in view of O’Handley et al

(‘004), Bowen et al. (‘043) and Watson et al. (Nozzle-Aspirated Metal-Forming) as applied to claims 1-8, 16, 17 and 34 and further in view of Rotolico et al. (‘225).

Claim 35 depends from independent claim 34 which was amended herein. Accordingly it is believed that claim 35 is in a condition for allowance for the reasons stated above.

In view of the above amendments and remarks, Applicant believes this application should be considered ready for allowance and Applicants earnestly solicit an early notice of the same. Should the Examiner be of the opinion that a telephone conference would expedite prosecution of the subject application, please call the undersigned at the below-listed number.

RESPECTFULLY SUBMITTED,

By Alan D. Kirsch
Alan D. Kirsch
Patent Attorney
Reg. No. 33,720
P. O. Box 1625
Idaho Falls, Idaho 83415-3899
(208) 526-1371

Date 11/05/03